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EXAMINER

TRAN, HANH VAN

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/791,550
Filing Date: March 01, 2004
Appellant(s): LAIBLE ET AL.

Mr. Andre Pallapies
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed April 30, 2010 appealing from the Office action mailed December 17, 2009.

(1) Real Party in Interest

The examiner has no comment on the statement, or lack of statement, identifying by name the real party in interest in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The following is a list of claims that are rejected and pending in the application:

30, 32-34, and 38-39.

Claims 31 and 37 are no longer rejected, but are objected to as being dependent upon a rejected base claim, and would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

(4) Status of Amendments After Final

The After Final Amendment filed on April 30, 2010 was entered as stated in the Advisory Action mailed on May 21, 2010.

(5) Summary of Claimed Subject Matter

The examiner has no comment on the summary of claimed subject matter contained in the brief.

(6) Grounds of Rejection to be Reviewed on Appeal

The examiner has no comment on the appellant's statement of the grounds of rejection to be reviewed on appeal. Every ground of rejection set forth in the Office

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action from which the appeal is taken (as modified by any advisory actions) is being maintained by the examiner except for the grounds of rejection (if any) listed under the subheading "WITHDRAWN REJECTIONS." New grounds of rejection (if any) are provided under the subheading "NEW GROUNDS OF REJECTION."

WITHDRAWN REJECTIONS

The following grounds of rejection are not presented for review on appeal because they have been withdrawn by the examiner: (1) Claim 31 is rejected under 35 U.S.C. 103(a) as being patentable over USP 2,845,320 to Saunders et al in view of USP 6,036,293 to Anell, USP 6,471,313 to Ueda et al and USP 4,102,721 to Carey, Jr, and (2) Claim 37 is rejected under 35 U.S.C. 103(a) as being unpatentable over Saunders, as modified, as applied to claim 34 above, and further in view of USP 6,036,293 to Anell.

(7) Claims Appendix

Claims 35-36 are canceled per the After Final Amendment filed on April 30, 2010, which was entered as stated in the Advisory Action mailed on May 21, 2010.

(8) Evidence Relied Upon

2,845,320	Saunders et al	07-1959
6,036,293	Anell et al	03-2000
6,471,313	Ueda et al	10-2002
4,102,721	Carey, Jr.	07-1978

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 30, 32-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over USP 2,845,320 to Saunders et al in view of USP 6,036,293 to Anell, USP 6,471,313 to Ueda et al and USP 4,102,721 to Carey, Jr.

Saunders discloses a refrigerating appliance, Such as shown in Fig 1, comprising all the elements recited in the above listed claims including a housing having a foam-filled hollow body comprising an inner wall, an outer wall spaced from the inner wall, the outer wall having an opening therethrough, a reinforcing plate 21 (such as shown in Figs 4-5) positioned on an inner side of the outer wall and coupled to the outer wall by a mechanical connection/rivet fastener 37, the reinforcing plate 21 having a hole therethrough, the hole in the reinforcing plate 21 being aligned with the opening in the outer wall, foam insulation located between the inner wall and the outer wall, a hinge plate 36 attached to the outer wall by a fastener 37 that passes through the opening in the outer wall and that is coupled to the hole in the reinforcing plate by threaded screws. The differences being that Saunders fails to disclose the reinforcing plate coupled to the outer wall by a clinch connection (instead of a rivet fastener), a destructible layer positioned between the reinforcing plate 21 and the outer wall so as to cover the hole in the reinforcing plate and the opening in the outer wall, the destructible layer being formed of the substantially incompressible material, wherein the fastener coupling the hinge plate to the outer wall pierces the destructible layer.

Anell teaches the idea of securing a reinforcing part 7 to the wall of the refrigerator housing by a clinch connection (col. 5, lines 2-6) in order to securely hold the reinforcing part 7 to the refrigerator housing wall. Ueda et al teaches the idea of providing a refrigerator housing wall (such as shown in Fig 20) with a destructible layer 51 disposed between and directly in contact with a wall and a reinforcing plate 14 of a refrigerator housing in order to prevent foam heat-insulating material from escaping through openings in the housing and reinforcing plate during filling of the foam heat-insulating material into the housing wall. Carey, Jr. also teaches the idea of providing, such as shown in Figs 2-3, an opening 22 in the housing of a refrigerator with a destructible layer 10 in order to prevent foam heat-insulating material from escaping through openings in the housing during filling of the foam heat-insulating material into the housing wall; wherein the destructible layer is formed of a substantially incompressible material.

Therefore, it would have been obvious to modify the structure of Saunders by having the reinforcing plate coupled to the outer wall by a clinch connection in order to securely hold the reinforcing plate 21 to the refrigerator housing wall, as taught by Anell, by providing a destructible layer positioned between the reinforcing plate 21 and the outer wall so as to cover the hole in the reinforcing plate and the opening in the outer wall in order to prevent foam heat-insulating material from escaping through openings in the housing and reinforcing plate during filling of the foam heat-insulating material into the housing wall, as taught by Ueda and Carey, with the destructible layer being formed of a substantially incompressible material, as taught by Carey, Jr., since the references

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teach alternate conventional refrigerator housing structure, used for the same intended purpose, thereby providing structure as claimed. Further, it is inherent that the threaded fasteners 37 which couples hinge plate 36 to the outer wall of Saunders, as modified, would pierce the destructible layer.

Claims 34, and 38-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over USP 2,845,320 to Saunders et al in view of USP 6,471,313 to Ueda et al and USP 4,102,721 to Carey, Jr.

Saunders discloses a refrigerating appliance, such as shown in Fig 1, comprising all the elements recited in the above listed claims including a housing having a foam-filled hollow body comprising an inner wall, an outer wall spaced from the inner wall, the outer wall having an opening therethrough, a reinforcing plate 21 (such as shown in Figs 4-5) positioned on an inner side of the outer wall and coupled to the outer wall by a mechanical connection/rivet fastener 37, the reinforcing plate 21 having a hole therethrough, the hole in the reinforcing plate 21 being aligned with the opening in the outer wall, foam insulation located between the inner wall and the outer wall, a hinge plate 36 attached to the outer wall by a fastener 37 that passes through the opening in the outer wall and that is coupled to the hole in the reinforcing plate by threaded screws. The differences being that Saunders fails to disclose a destructible layer positioned between the reinforcing plate 21 and the outer wall so as to cover the hole in the reinforcing plate and the opening in the outer wall, the destructible layer being formed of a substantially inelastic material, wherein the fastener coupling the hinge plate to the outer wall pierces the destructible layer.

Ueda et al teaches the idea of providing a refrigerator housing wall, such as shown in Fig 20, with a destructible layer 51 disposed between and directly in contact with a wall and a reinforcing plate 14 of a refrigerator housing in order to prevent foam heat-insulating material from escaping through openings in the housing and reinforcing plate during filling of the foam heat-insulating material into the housing wall. Carey, Jr. also teaches the idea of providing, such as shown in Figs 2-3, an opening 22 in the housing of a refrigerator with a destructible layer 10 in order to prevent foam heat-insulating material from escaping through openings in the housing during filling of the foam heat-insulating material into the housing wall; wherein the destructible layer is formed of a substantially inelastic material.

Therefore, it would have been obvious to modify the structure of Saunders by providing a destructible layer positioned between the reinforcing plate 21 and the outer wall so as to cover the hole in the reinforcing plate and the opening in the outer wall in order to prevent foam heat-insulating material from escaping through openings in the housing and reinforcing part during filling of the foam heat-insulating material into the housing wall, as taught by Ueda and Carey, with the destructible layer being formed of a substantially inelastic material, as taught by Carey, Jr., since the references teach alternate conventional refrigerator housing structure, used for the same intended purpose, thereby providing structure as claimed. Further, it is inherent that the threaded fasteners 37 which couples hinge plate 36 to the outer wall of Saunders, as modified, would pierce the destructible layer.

(10) Response to Argument

In response to Appellant's arguments on pages 8-10 that Ueda and Carey, Jr. fail to disclose or suggest providing any type of film or material layer between the outer wall of a refrigerator body and a reinforcing plate located behind the outer wall, and that the layer of Ueda is highly elastic and thus teaches away from the claimed invention, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). In this instant, Ueda et al is used for the teaching of providing a refrigerator housing wall with a destructible barrier layer disposed between a wall of the refrigerator and a reinforcing plate in order to prevent foam heat-insulating material from escaping through openings in the housing and the reinforcing plate during filling of the foam heat-insulating material into the housing wall. While, Carey, Jr. is also used for the teaching of providing an opening of a refrigerator housing with a destructible barrier layer in order to prevent foam heat-insulating material from escaping through openings in the housing during filling of the foam heat-insulating material into the housing wall; wherein the destructible layer is formed of a substantially incompressible material.

In response to Appellant's arguments on page 10 that the Office Action appears to suggest modifying the layer of Ueda with the layer of Carey, Jr., the examiner respectfully takes the position that it is not the case of modifying a modifier. But rather

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the teachings of both Ueda and Carey, Jr., taken as a whole, suggest the idea of providing openings of a refrigerator housing with a barrier layer in order to prevent foam heat-insulating material from escaping through openings in the housing during filling of the foam heat-insulating material into the housing wall. With Ueda further teaches the idea of the barrier layer disposed between a wall of the refrigerator and a reinforcing plate, and Carey, Jr. further teaches the destructible layer being formed of a substantially incompressible material.

In response to Appellant's argument on page 11 that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Appellant's arguments with respect to claims 31 and 37 have been fully considered and are persuasive. The rejection of claims 31 and 37 has been withdrawn.

In response to Appellant's argument on page 12 that the prior art of record fails to teach the limitations in claim 39 of a fastener piercing a destructible layer in order to attach a hinge plate to an outer wall, the examiner respectfully takes the position since Saunders, as modified to include a destructible layer between an outer wall and a reinforcing plate to prevent foam heat-insulating material from escaping through

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openings in the housing during filling of the foam heat-insulating material into the housing wall, and once the refrigerator housing being filled with the foam heat-insulating material, it is inherent the threaded fasteners 37 of Saunders, as modified, being used to attach hinge plate 36 to the outer wall would pierce the destructible layer.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Hanh V. Tran

/Hanh V. Tran/

Primary Examiner, Art Unit 3637

Conferees:

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